

# **1995 Fiscal Note Study Report**

House and Senate Fiscal Committees

November 1, 1995

## **1995 STUDY DIRECTIVE & PREVIOUS FISCAL NOTE STUDIES**

The 1995-97 operating budget bill directed the fiscal committees of the House and Senate to conduct a study of the fiscal note system. As stated in the proviso, the evaluation was to consider the following:

*Whether the process for developing fiscal notes has adequate controls to ensure that the data and methodologies used are current and reliable...and how the accuracy, reliability and timeliness of fiscal notes can be improved.*

Concern over fiscal note integrity prompted the legislative study, but credibility and organizational issues preceded the 1995 legislative session. The Legislative Budget Committee (LBC) first examined the fiscal note system in 1968, and in 1977 the Legislature formalized the fiscal note process in statute. (The statutes are included as Appendix A.) The statutes directed the Office of Financial Management (OFM) to establish fiscal note procedures and instructions for determining the fiscal impacts of legislation on both state and local governments.

Three additional studies were undertaken to examine fiscal note procedures between 1977 and 1990, the most recent being the Washington 2000 Committee fiscal note study. (Summaries of these studies are included as Appendix B.)

The 1995 study was coordinated principally by legislative staff from the House and Senate fiscal committees, with oversight provided by the chairs and ranking minority members of those committees. Staff from the policy committees, caucuses, agencies and OFM also participated in the study.

## **STUDY METHODOLOGY**

The fiscal note study team sought information, ideas, analysis and participation from all entities involved in the fiscal note process. This included: a survey of all legislative members; a state agency survey; the formation of a study work group with representatives from OFM, state agencies and legislative staff; and meetings with legislative committee and caucus staff. The study team also analyzed a sample of fiscal notes, conducted a national information search, and reviewed available literature on previous studies of Washington's fiscal note system. Each of these activities are briefly described below:

### **Legislative Member Survey**

A written questionnaire was distributed to the one hundred and forty-seven members of the 1995 Legislature. The questionnaire was designed to obtain legislators' perceptions regarding the fiscal note process and the quality of fiscal notes. Seventy-two percent of the questionnaires were returned. (The questionnaire and the member survey results are included as Appendix C).

### **State Agency Survey**

A written questionnaire was distributed to the forty-six state agencies that produced ten or more fiscal notes in the 1995 legislative session. The questionnaire covered a variety of topics including: internal agency prioritization; preparation and review of fiscal notes; the impact of fiscal note preparation on the agency; reasons for delays in fiscal note preparation; and fiscal note training for employees. Ninety-eight percent of the questionnaires were returned. (The questionnaire and the agency survey results are included as Appendix D.)

### **Staff Discussion Group Meeting**

House and Senate committee and caucus staff were invited to a discussion group meeting. The purpose of the discussion was to identify problems with the current fiscal note process and possible corrective/preventive measures. (A summary sheet of the identified problems and solutions as a result of this discussion is included as Appendix E.)

### **Fiscal Note Sample**

Forty-five fiscal notes from the 1995 legislative session were sampled in order to analyze the structure and content of fiscal notes. The selection process ensured all policy areas (e.g. natural resources, human services, higher education, etcetera) were represented and provided for a diverse sample of agencies.

### **National Information Search**

Telephone interviews were conducted with persons knowledgeable about the fiscal note process in fourteen other states. The states were selected based on their similarity to Washington, budget size, and fiscal note system and structure. Several states were selected based on their unique fiscal note system and structure. In addition, written materials regarding the fiscal note system and structure in other states were obtained from the National Conference of State Legislatures and the Council of State Governments. (A summary of the national information search is included as Appendix F).

### **Previous Studies of Washington's Fiscal Note System**

Previous studies of Washington's fiscal note system were reviewed in order to provide background information and also to avoid duplicating these efforts. The Legislative Budget Committee conducted four studies (1968, 1970, 1982, 1986) related to the fiscal note system and the Washington 2000 Project conducted a study in 1990.

### **Study Work Group**

A study work group was formed with representatives from OFM, agencies and legislative staff. This work group met several times in order to discuss fiscal note problem areas and possible recommendations. (A list of members of the work group is included as Appendix H.)

## **CURRENT FISCAL NOTE PROCESS**

There are two types of fiscal notes: state fiscal notes which assess the fiscal impact of legislation on state agencies; and local government fiscal notes which assess the fiscal impact on local governments. The two types of fiscal notes are briefly discussed below:

### **State Fiscal Notes**

The enacting of RCW 43.88A in 1977 established procedures and designated the entities responsible for developing fiscal impacts on measures and resolutions. While the Office of Financial Management is designated as the lead agency for the development of these procedures, the statute also delineated the role of legislative committees and committee staff in the fiscal note process. The process is as follows:

- A fiscal note request may be initiated by legislators, legislative staff or executive request.
- OFM monitors the request and coordinates the development of fiscal notes with all affected agencies.
- Agencies determine the fiscal impact and return the fiscal notes to OFM.
- OFM reviews the fiscal notes for form, accuracy and completeness.
- Following OFM review and approval, the fiscal note is forwarded to the requestor and the fiscal committees of the House and Senate.

### **Local Government**

In 1977, the Legislature also adopted RCW 43.132, addressing the fiscal impact of legislation on local governments. Under this statute, OFM is responsible for the coordination of the local government fiscal note system, and Department of Community, Trade, and Economic Development (CTED) is responsible for the actual preparation of the fiscal notes. The statute requires that local government fiscal notes be prepared within seventy-two hours of the initial request. The process is as follows:

- A local government fiscal note request may be initiated by legislators, legislative staff, executive request or the determination that the measure might have a fiscal impact on political subdivisions.
- OFM monitors the request and coordinates the development of fiscal notes with CTED.
- CTED consults with local governments based upon a random selection process and/or the Department of Revenue in order to prepare fiscal notes.

- CTED internally reviews the fiscal note and forwards it back to OFM.
- OFM reviews the fiscal notes for form, accuracy and completeness.
- Following OFM review and approval, the fiscal note is forwarded to the requestor and the fiscal committees of the House and Senate.

### **1995 SESSION**

During the 1995 session, fiscal notes were prepared for approximately forty percent of the 3299 bills, initiatives, memorials and resolutions introduced. However, the total number of fiscal notes processed and distributed by OFM was 4386, because most measures affected multiple agencies or had additional fiscal notes prepared on amended versions. (A fiscal note statistical summary is included as Appendix G.)

## **FINDINGS AND RECOMMENDATIONS**

The findings and recommendations are organized around the thirteen problem areas related to fiscal notes that were identified through the course of the study. These problem areas are:

- 1. Understanding the purpose of fiscal notes**
- 2. Bill intent**
- 3. Agency assumptions and justification**
- 4. "Indeterminate" fiscal notes**
- 5. Credibility**
- 6. Amendments**
- 7. Timeliness**
- 8. Volume**
- 9. Training**
- 10. Local government fiscal notes**
- 11. Multiple agency fiscal notes**
- 12. Forms**
- 13. Accessing completed fiscal notes**

## **(1) Understanding the Purpose of Fiscal Notes**

### **Finding:**

A common understanding of the purpose of fiscal notes is needed for all persons involved in their preparation and use.

### **Recommendation:**

**Establish an intent statement for fiscal notes. A recommended statement follows:**

*The purpose of the fiscal note system is to provide an objective and timely estimate of the expenditure and revenue impact that a specific measure would have on state and local government, and local school districts. Taken with other fiscal data, this information allows legislators, the executive and others involved in the legislative process to make informed fiscal decisions.*

## **(2) Bill Intent**

### **Findings:**

Accurate fiscal impact information cannot be provided for legislation that is unclear or ambiguous.

In a ranking of fiscal note problems, "unclear bill intent" received the most number one rankings among state agencies surveyed.

However, there is a difference between the difficulty in estimating costs due to unclear intent, and the difficulty of estimating costs due to legislation that intentionally includes discretionary policies that yield a range of cost estimates (such as a bill that intentionally gives judges broad discretion in setting sentences). With regard to cost estimates, legislators must recognize that discretionary policies can generate wide ranges of costs and conversely, agencies need to understand the importance of linking assumptions based on intentionally discretionary policies with ranges of cost estimates. In any case, it is unrealistic to expect that legislation will be changed to eliminate discretion.

Communication among agency staff, legislative staff, and members is not always sufficient to clarify legislative intent -- both before and after bills are introduced.

### **Recommendations:**

- a. Legislators should reaffirm a commitment to clearly drafted legislation, through activities such as additional consultation with legislative, agency and code revisor staff during the drafting process. (With all participants recognizing that there is a difference between intentional discretion and unclear intent.)
- b. Along with the fiscal note request, requestors should send bill reports, when they are available, and any other relevant documents that would assist in understanding the fiscal impact. OFM should forward all these materials including the fiscal note request to the agencies.



### **(3) Agency Assumptions and Justification**

#### **Findings:**

Agency assumptions and justification for fiscal estimates are not always clearly stated or linked directly to provisions in the bill.

There are no specific sections on the fiscal note form for assumptions and justification.

"More supporting detail in the presentation of assumptions and estimates" was the suggestion made most often by legislators responding to a survey regarding improving fiscal notes.

#### **Recommendations:**

- a. The fiscal note form should be changed so that agency assumptions regarding workload and other cost drivers, and justification of estimates are both required and identified clearly in specific sections.
- b. The expectations for justifying fiscal estimates and stating assumptions should be developed by OFM, legislative and agency staff, and be included in fiscal note training.

#### **(4) "Indeterminate" Fiscal Notes**

##### **Findings:**

Too often the fiscal impact in a fiscal note is described as "indeterminate". Based on a sampling of fiscal notes reviewed, an estimated twenty-four percent of the fiscal notes have at least one agency reporting the impact as "indeterminate."

State agencies have indicated that "indeterminate" estimates result from uncertainty regarding legislative intent, intentional discretionary policies in the bill; or data used to calculate estimates that are uncertain, volatile, or nonexistent.

Allowing cost or revenue ranges is often suggested as a way to communicate the level of uncertainty regarding estimates, and as an improvement over "indeterminate". Since the budget writing process ultimately requires single estimates, the operational reality of displaying ranges is that single midpoints would sometimes need to be calculated and used.

##### **Recommendations:**

- a. To reduce the number of fiscal notes that report an "indeterminate" fiscal impact, the form should allow agencies the flexibility to report a range of possible costs. The range of costs would be linked to alternative assumptions and scenarios identified in the fiscal note. However, on the first page of the form, agencies should be required to report the single fiscal estimate that reflects the most likely assumptions and scenario.
- b. Agencies should respond "indeterminate" only in those few cases when no data exists to support a reasonable set of assumptions. Prior to making this determination, steps should be taken to obtain the information necessary to develop an estimate or to consult with the requestor.

## **(5) Credibility**

### **Findings:**

Legislators lack confidence regarding the accuracy and reliability of fiscal notes. The average ranking of legislators' responses to a survey question regarding their confidence level in the accuracy and reliability of fiscal notes was 4.1 (one being low and ten being high). Some legislators suggested the creation of an independent agency to prepare fiscal notes.

Credibility problems can come from both real and perceived lack of objectivity; inadequate data; insufficient communication between sponsor and agency; vagueness of the bill; or disagreement on basic assumptions about what the bill does or what it takes to implement the bill.

The broad discretion given to agencies when estimating costs contributes to legislative concerns that costs are pushed upward or downward depending on an agency's policy position. For example, legislators question the basis on which agencies may make policy decisions to absorb the cost of certain measures via the fiscal note process, while itemizing cost increases of a similar magnitude on other measures. Even though OFM strives for objectivity, legislators also question the objectivity of OFM in reviewing fiscal notes.

Fifteen percent of legislators responding to a survey expressed their belief that the formulation of fiscal notes by an independent agency would result in a more reliable and accurate fiscal note. An additional twelve percent felt that the formulation of fiscal notes by a separate legislative entity would have the same result. Another twelve percent thought that more direct input or oversight by legislative staff would result in better fiscal notes. In addition, some discussion group participants suggested a stronger legislative role in the review of fiscal notes.

A review of practices in other states shows that the majority have stronger legislative roles in the administration and review of fiscal notes.

During work group discussions, several participants noted that the most successful fiscal analyses on major issues resulted when work groups of agency, OFM, and legislative staff were established to develop common information bases and assumptions from which to cost various policy options.

### **Recommendations:**

#### **For the 1996 Session:**

- a. Legislative and OFM expectations of agencies for fiscal information should be clarified and included in fiscal note instructional materials and training.

- b. Guidelines should be established for consistent assumptions regarding standard cost items such as wages, benefits, equipment, supplies, inflation, etc.
- c. Fiscal note instructions and forms should be changed to require all incremental costs of a measure to be depicted on the fiscal note, including those that the agency may be willing to absorb. The agency may express a willingness to absorb costs as an assumption, but this should be accompanied by an explanation of what would be displaced.
- d. As early as possible, legislative/agency/OFM staff work groups should be formed for major issue areas. The groups would compile consistent data and assume responsibility for expediting fiscal estimates as measures move through the legislative process.
- e. The legislative review of fiscal notes should be strengthened by requiring that legislative committee analysts review them to ensure that assumptions are consistent with the bill's intent, and that the estimates are reasonable and adequately explained. Unsatisfactory fiscal notes should be returned to the agency staff for revision. Completion of legislative review does not imply a funding recommendation.

**For future sessions, the legislature should consider alternatives for the administration, review, and approval of fiscal notes. The alternatives could include:**

- a. Maintaining OFM's current statutory role.
- b. Replacing OFM's current role with alternatives such as:
  - i. Committing legislative committee or LBC staff to this purpose (either additional staff or determine what functions would be displaced).
  - ii. Establishing a new joint House/Senate committee or office for fiscal notes.
- c. Other alternatives as identified.

In considering recommendations or alternatives, the following criteria should be used: work cycle capacity; knowledge about agencies and programs; objectivity and technical expertise; associated costs; and ability to establish clear accountability.

## **(6) Amendments**

### **Findings:**

Fiscal notes for amended and substitute measures are often not updated prior to legislative action which moves the measure out of committee, off the floor or out of conference. This is primarily due to legislative timelines.

In the state agency ranking of fiscal note problems, "inability to obtain latest version of bill" was frequently identified by agencies as causing delays in submitting fiscal notes.

In group discussions with policy and fiscal committee staff, the legislative cut-off schedule was identified as a major hurdle to obtaining updated fiscal notes for modified bills, particularly with a three day window between policy committee and fiscal committee cut-offs.

### **Recommendations:**

- a. Once agency/legislative work groups are formed to compile consistent data regarding major fiscal issues, they should assume responsibility for expediting revised fiscal estimates as related bills move through the legislative process.
- b. During the establishment of legislative schedules, legislators should be aware of the choice between having updated fiscal information on amended bills and having short timelines between action steps, including policy committee, fiscal committee, floor, and conference schedules.
- c. When a fiscal note is requested for an amended bill, it should always be accompanied by a bill report that summarizes the substance of the changes. Agency staff should be alerted as early as possible regarding the need for fiscal notes on amended bills.

## **(7) Timeliness**

### **Findings:**

Legislators perceive the "timeliness" of fiscal notes to be a major problem, while agencies are concerned with rigid turnaround requirements that do not recognize the volume of requests, legislative schedules, bill complexity, or extensive data searches.

Twenty-five percent of the legislators responding to a survey regarding fiscal note problems cited "timeliness" as a major area of concern.

Agencies have indicated that reduced volume would result in improved timeliness.

### **Recommendations:**

- a. Fiscal note requests should be made as far in advance of a hearing date as possible. When setting due dates, requestors should emphasize receiving information for hearings and concentrating resources on major fiscal issues. Extra time should be allowed for particularly complex measures or complex data searches.
- b. In the absence of a hearing date or an extended due date from the requestor, a five day standard for the preparation of fiscal notes should be maintained. However, notes should be completed at least 24 hours before a scheduled hearing date. This means requests should be made at least six days prior to the hearing date.
- c. When requested, an agency should provide a draft fiscal note to legislative staff at the same time it is provided to OFM. Draft fiscal notes would facilitate early communication and would not be for distribution.
- d. The legislature should take steps to reduce the volume of fiscal note requests. (See the recommendations for addressing "volume" in the following section.)

## **(8) Volume and Prioritization**

### **Findings:**

The steady increase in the volume of fiscal notes processed each session has meant increasing costs and an increasing share of staff resources being devoted to their preparation. In addition, insufficient effort is made to prioritize fiscal research according to the importance of an issue.

The number of fiscal notes processed during odd-numbered legislative sessions has increased from 2,444 in 1987 to 4,386 in 1995 (79% increase). At the same time, the number of bills increased from 2,355 to 3,198 (36% increase).

In some instances, fiscal notes are routinely requested for bills with no assessment as to whether or not they have any fiscal impact or the likelihood they will be scheduled for a hearing.

During work group discussions, several participants expressed the opinion that too much emphasis is placed on completing all fiscal notes requested on time, rather than directing resources to major issues.

### **Recommendations:**

**In order to allocate resources most effectively, work on fiscal notes and other fiscal information should be prioritized by:**

- a. As early as possible, forming work groups composed of legislative, OFM and agency staff on issues likely to have major fiscal impact. (Work groups could be initiated by legislative, OFM or agency staff).
- b. Determining whether a measure is likely to need a fiscal note when it is referred on first reading. (Determination should be made by committee staff). Fiscal notes should not be requested when there is little evidence of fiscal impact.
- c. Not requesting a fiscal note unless a measure is likely to be scheduled for a hearing.
- d. Training committee staff on criteria and procedures for requesting a fiscal note, with an emphasis on avoiding unnecessary requests, and an emphasis on communication among policy and fiscal committee staff.

- e. Allowing a single page fiscal note if the fiscal impact is less than \$50,000 in any fiscal year.
- f. Allowing a check-off of "no fiscal impact" when the measure has no impact on an agency (and then not completing the rest of the fiscal note). However, OFM and legislative staff reviewers should reject these when they believe there actually is an impact, and request agency justification.



## **(9) Training**

### **Findings:**

On surveys and in work group discussions, legislators, legislative staff, OFM staff, and agency staff all suggested that education for all participants involved in the fiscal note process is important to improving fiscal notes.

### **Recommendations:**

- a. Fiscal note training materials should be developed for staff that include: (1) the purpose of fiscal notes; (2) when and how to request fiscal notes; (3) how to complete fiscal notes; (4) how to review completed fiscal notes.
- b. Annual training programs should be conducted that are structured around the major functional areas of state government. They should include the respective legislative policy and fiscal committee analysts, OFM analysts, and agency staff responsible for fiscal notes. The training sessions should also be used to initiate work groups for issues likely to have major fiscal impact.
- c. Fiscal note training materials should be developed for legislators that include:
  - (1) the purpose of fiscal notes;
  - (2) when and how they are requested;
  - (3) why and how committee leaders can minimize the number of fiscal notes requested and maximize the time for their preparation; and
  - (4) how to understand completed fiscal notes.
- d. Fiscal note training materials should be distributed annually to all legislators and should be included in orientation programs for new legislators.

## **(10) Local Government Fiscal Notes**

### **Findings:**

The Department of Community, Trade and Economic Development (CTED) is responsible for coordinating local government fiscal notes, but is essentially dependent on other sources [cities, counties, the Departments of Revenue (DOR) and Licensing (DOL), etcetera] for fiscal information and data.

Given the large number, variety and geographic dispersion of local government entities, it is difficult to generate comprehensive statewide data on fiscal impacts. Local government fiscal notes often do not provide fiscal impact estimates, explanations, and justification sufficient for users to make informed fiscal decisions.

The broad discretion given to the local government entities making cost estimates contributes to legislative concerns that costs are pushed upward or downward depending on policy positions.

Legislators and legislative staff rely on DOR for estimated impacts (both revenue and related administrative costs) of revenue legislation. The current process which requires that local government fiscal notes for revenue legislation come through CTED makes CTED an intermediary that lengthens the process.

The legal climate has changed regarding local government fiscal notes. I-601 imposed additional responsibility on the state for some local government costs. This increases the need for accurate local government fiscal estimates.

The current format and requirements for local government fiscal notes are inconsistent with those for state agencies.

### **Recommendations:**

- a. OFM, CTED and DOR should revise the requirements and forms for local government fiscal notes to be consistent with requirements and forms for state agency fiscal notes.
- b. DOR should be assigned the responsibility for estimating the local government impacts for revenue legislation (both revenue and related administrative costs).
- c. DOR and CTED should develop a model, based on a sampling of cities of counties, that could be used for consistent local government projections of fiscal impact. The "sample" local government entities should produce information that can be used to extrapolate statewide fiscal projections.

- d. CTED and DOR should allocate staff resources for fiscal notes that reflect the importance placed on fiscal notes by the legislature and adequate to meet expectations.
- e. As early as possible, work groups of legislative, OFM, CTED and DOR staff should be formed for issues likely to have major fiscal impact for local government.
- f. In order to reduce the number of local government fiscal note requests, legislative committee staff should be particularly diligent in assessing the need for local government fiscal notes.

## **(11) Multiple agency fiscal notes**

### **Findings:**

Many of the 4,386 fiscal notes prepared for the 1995 session were "multiple agency" fiscal notes (when a bill has fiscal impact on more than one agency).

In a sample of fiscal notes reviewed, forty-eight percent were prepared by two or more agencies, and approximately fifteen percent were prepared by four or more agencies.

Often, interpretations of what the bill does and assumptions about factors driving costs or revenue differ among the agencies affected by the same bill. Further, there is no form that summarizes the statewide fiscal impact of bills affecting multiple agencies.

When bills impact both the Office of the Superintendent of Public Instruction (OSPI) and the local school districts, only the OSPI impact is currently included in the estimates on the front page of the fiscal note. The impact on local school districts is included in the supporting pages.

### **Recommendations:**

- a. A form should be developed that summarizes information for multiple agency fiscal notes.
- b. Multiple agency fiscal notes should be reviewed for consistency in assumptions.
- c. When distributing fiscal note requests for bills that affect four or more agencies, OFM should coordinate consistent assumptions and complete the statewide summary form, or OFM should identify a lead agency to be responsible for this.
- d. The fiscal note instructions should require the total of the OSPI and local school district impact amounts to be shown on the front page of the individual agency fiscal note form and the separate amounts to be described in the supporting pages.

## **(12) Revised Fiscal Note Forms**

### **Finding:**

A number of the findings and recommendations of the fiscal note study involve modifications to the design and content of the form used in the preparation of fiscal notes.

### **Recommendations:**

- a. Page one should be simplified.
- b. The supporting pages should be more structured and specific regarding what information is required.
- c. To reduce the number of fiscal notes that report an "indeterminate" fiscal impact, the form should allow agencies the flexibility to report a range of possible costs. The range of costs would be linked to alternative assumptions and scenarios identified in the fiscal note. However, on the first page of the form, agencies should be required to report the single fiscal estimate that reflects the most likely assumptions and scenario.
- d. Separate sections of the form should be provided for capital budget impacts, and identification of new rule-making requirements.
- e. A multiple agency and local government fiscal note summary form should be developed to summarize the total fiscal impact of a measure that affects more than one agency.

### **(13) Access to Completed Fiscal Notes**

#### **Findings:**

Under the current procedures, paper copies of fiscal notes are maintained by the fiscal committees of both the House and Senate and the Office of Financial Management. Legislators and others involved in the legislative process are alerted to their existence by the bill reports which contain a specific section for indicating whether or not a fiscal note has been requested and/or is available. Legislators have access to bill reports, when available, via Atlas and during committee hearings. In addition, for persons connected to the Legislative Service Center, bill reports are accessible "on-line." Bill reports are also available to the public from the bill room. Copies of fiscal notes are only distributed to legislators and made available to the public at committee hearings. However, copies of fiscal notes are also available upon request to fiscal committee staff or OFM.

During work group discussions, some participants suggested that completed fiscal notes or fiscal note summaries be made available "on-line" via the Legislative Service Center.

#### **Recommendations:**

- a. For the 1996 Session: Efforts should be focussed on improving the content and quality of fiscal notes, rather than automating access to completed fiscal note information.
- b. For Future Sessions: The legislature, OFM and agencies should collaborate on alternatives for putting fiscal information "on-line."